MEANING OF "JURISDICTION OF SUBJECT MATTER"

Collins v. Collins,
14 Ill. 2d 271, 151 N.E.2d 813 (1958)

Plaintiff had obtained a decree of divorce in the circuit court on the ground that her husband had been guilty of "habitual drunkenness for the space of two years and upward"[1] subsequent to the marriage. Plaintiff filed a petition[2] to vacate the divorce decree alleging that the circuit court lacked jurisdiction over the subject matter because the complaint showed on its face that the parties could not possibly have been married for a space of two years preceding the commencement of the divorce action.[3] The Supreme Court of Illinois, reversing the appellate court[4] and affirming the circuit court, upheld the plaintiff's contention,[5] two judges dissenting.

It is well established that if a court has jurisdiction over the subject matter and the parties its decree cannot be collaterally attacked no matter how erroneous the decree may be.[6] There is no question that the court had jurisdiction of the parties in the instant case. The only problem is whether the circuit court had jurisdiction over the subject matter.

Many decisions of the Supreme Court of Illinois, in accordance with the weight of authority,[7] have stated that jurisdiction of subject matter is the power of the court to hear and determine the general

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[1] This is one of the grounds for divorce as provided in ILL. REV. STAT. ch. 40, § 1 (1955).

[2] Although plaintiff's petition to vacate the decree would be considered by many courts as a "direct" rather than a "collateral attack," previous Illinois cases have classified such petitions as collateral attacks. The statute which makes this result possible in Illinois is ILL. REV. STAT. ch. 110, § 72 (1955). See Note, *The Value of the Distinction Between Direct and Collateral Attacks on Judgments,* 66 YALE L.J. 526 (1957).

[3] The complaint for divorce was filed and summons served on June 25, 1955. It was stated in the complaint that the parties were married December 23, 1953; the decree of divorce was entered July 26, 1955.

[4] Collins v. Collins, 14 Ill. App. 2d 350, 144 N.E.2d 845 (1957).

[5] The majority opinion stated, "The complaint thus shows affirmatively on its face that the habitual drunkenness alleged could not possibly have existed for the space of two years subsequent to the marriage and prior to the date of filing the complaint for divorce. Hence the complaint does not allege a 'case of divorce' allowed by our Divorce Act, and the circuit court did not have jurisdiction of the cause." Collins v. Collins, 14 Ill. 2d 271, 151 N.E.2d 813 (1958).

[6] Anderson v. Anderson, 380 Ill. 435, 44 N.E.2d 54 (1942); Sheahan v. Madigan, 275 Ill. 372, 114 N.E. 135 (1916); O'Brien v. People *ex rel.* Kellog Switchboard & Supply Co., 216 Ill. 354, 75 N.E. 108 (1905). It is equally well established that when a judgment is entered by a court having no jurisdiction to hear and determine a case, it is absolutely void and it may be attacked at any time. Demilly v. Grosrenaud, 201 Ill. 272, 66 N.E. 234 (1903).

[7] Hunt v. Hunt, 72 N.Y. 217 (1878) (a case often cited for its explanation of jurisdiction of subject matter). See 49 C.J.S. *Judgments* § 401 (1947) and cases collected therein.

question involved;[8] it is the power to act upon the abstract question regardless of whether the plaintiff has a good cause of action.[9] In *People ex rel. Courtney v. Prystalski*,[10] the court held that, "Jurisdiction of a court to hear and determine a cause *does not depend upon actual facts alleged* but upon authority to determine existence or nonexistence of such facts and render judgment according to such findings." (Emphasis added.)

In the instant case, it was held that since the complaint does not allege a "case of divorce," the circuit court did not have jurisdiction of the cause. This statement is inconsistent with prior Illinois decisions[11] which hold that jurisdiction of the subject matter is not dependent upon a good cause of action in the complaint or the sufficiency of the complaint but upon the court's authority to hear the case.[12]

The majority, in support of its position, cites *Bennet v. Bennet*,[13] a West Virginia case, which held that where there is no pleading to warrant a decree it is not merely voidable but void. The holding in the *Bennet* case is inconsistent with *Ward v. Sampson*[14] in which the Supreme Court of Illinois refused to allow a collateral attack on a divorce decree which was rendered on one ground when plaintiff had sought it on a different ground. It was held that such an erroneous decision was subject to attack on appeal but not to collateral attack. In that case the court said, "The authorities establishing the principle that the pleading, proof and decree must correspond do not hold that the decree is void. It is merely erroneous."

The importance of the decision in the instant case lies in the fact that the Supreme Court of Illinois deviated from fundamental concepts of jurisdiction. The court set aside an erroneous divorce decree holding that the circuit court lacked jurisdiction of the subject matter because

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[8] Ward v. Sampson, 395 Ill. 353, 70 N.E.2d 324 (1946); Ashlock v. Ashlock, 360 Ill. 115, 195 N.E. 657 (1935); Woodward v. Ruel, 355 Ill. 163, 188 N.E. 911 (1933).

[9] Moore v. Town of Browning, 373 Ill. 583, 27 N.E.2d 533 (1940); Knaus v. Chicago Title & Trust Co., 365 Ill. 588, 7 N.E. 298 (1937). See O'Connor v. Board of Trustees, 247 Ill. 54, 57, 93 N.E. 124, 125 (1910), in which the court said: "The proper test as to whether the circuit court had jurisdiction is: Would the court under any circumstances have the authority to enter such orders and judgments as it did enter? If it had, then it had jurisdiction over the subject-matter and the particular questions and circumstances involved and determined in those cases cannot be inquired into or attacked in a collateral proceeding."

[10] 358 Ill. 198, 192 N.E. 908 (1934).

[11] See notes 8-10, *supra*.

[12] It is clear that the circuit court has the authority to hear and determine divorce cases. "The circuit courts of the respective counties and the Superior Court of Cook County shall have jurisdiction in all cases of divorce and alimony allowed by this act." ILL. REV. STAT. ch. 40, § 5 (1955).

[13] 137 W. Va. 179, 70 S.E.2d 894 (1952). This case is criticized in 55 W. VA. L. REV. 158 (1952).

[14] *Supra* note 8.

the complaint was defective on its face. The holding may create serious questions regarding the validity of title and the legitimacy of children. Would realty sold by plaintiff's husband after his "divorce" still be subject to the dower rights of plaintiff? How could an examiner of titles detect this cloud? Would the children of plaintiff's husband and a second wife be legitimate? These are but a few of the many problems that could arise because of this decision.

Aside from the jurisdictional problem presented by this decision, it is arguable as to whether the outcome of this case is sound from a public policy standpoint. It is true that the state is a party in all divorce cases and that it is interested in the protection of the marriage relationship.[15] However, it is difficult to see what public policy considerations would justify setting aside a decree of divorce in a case such as the instant one where the divorce was granted, the property rights of the parties settled by mutual agreement and the parties subsequently relied upon the decree (plaintiff remarried after the divorce was granted).[16]

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[15] Johnson v. Johnson, 381 Ill. 362, 45 N.E.2d 625 (1943); Leland v. Leland, 319 Ill. 426, 150 N.E. 270 (1926); Norwood v. Norwood, 333 Ill. App. 469, 77 N.E.2d 552 (1948).

[16] The purpose of this note is not to consider whether the court should have set aside the divorce decree but to question the basis for the decision in the instant case, *i.e.*, that the court lacked jurisdiction over the cause. There is also an interesting question of estoppel in the case which this note does not attempt to cover. Should the plaintiff have been estopped from setting aside the divorce decree because she brought the original divorce action which failed to set forth a good cause of action and testified in support of said complaint? See Jardine v. Jardine, 291 Ill. App. 152, 9 N.E.2d 645 (1937). Should plaintiff have been estopped because of the mutual property settlement? See Gridley v. Wood, 305 Ill. 375, 137 N.E. 251 (1922) and Scott v. Scott, 304 Ill. 267, 136 N.E. 659 (1922). In the instant case, the supreme court, after stating that defendant had waived his right to argue estoppel since the issue was not presented in the lower court, answered the above questions in the negative. Finally, if a proceeding to vacate a divorce decree were considered a direct instead of a collateral attack in Illinois, the supreme court could have reached the same result, *i.e.*, vacated the decree, without relying upon a questionable interpretation of jurisdiction of subject matter.